

JS 44 (Rev. 12/07)

SD CIVIL COVER SHEET

15-cv-2402

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

MELISSA DEVIN MAGNESS, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Philadelphia, PA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Kalikhman & Rayz, LLC 1051 County Line Road, Suite A
Huntingdon Valley, PA 19006 (215) 364-5030

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

DEFENDANTS

Bank of America, N.A., et al.

County of Residence of First Listed Defendant Charlotte, NC
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609				

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227

Brief description of cause:
TCPA Claim

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

5/1/15

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

MAY 01 2015

UNITED STATES DISTRICT COURT

15

2402

SD
FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: c/o Kalikhman & Rayz, LLC 1051 County Line Road, Suite A Huntingdon Valley, PA 19006

Address of Defendant: 100 N. Tryon Street Charlotte, NC 28255

Place of Accident, Incident or Transaction: Philadelphia, PA

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☐
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☐
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☐
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☐

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations

7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases

(Please specify) Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227, et seq.

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Eric Rayz, Esq., counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☒ Relief other than monetary damages is sought.

DATE: 5/1/15

Attorney-at-Law

87976

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 5/1/15

Attorney-at-Law

87976

Attorney I.D.#

MAY 01 2015

MAY 01 2015

SD

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

MAGNESS, et al.

v.

BANK OF AMERICA, N.A., et al.

CIVIL ACTION

15

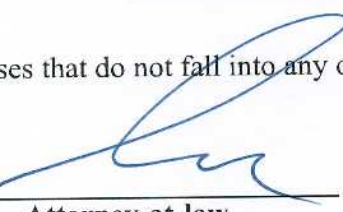
2402

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) (x)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

5/1/15		Plaintiff
Date	Attorney-at-law	Attorney for
(215) 364-5030	(215) 364-5029	erayz@kalraylaw.com
Telephone	FAX Number	E-Mail Address

(Civ. 660) 10/02

MAY 01 2015

Court Name: EOPA-Philadelphia
Division: P
Receipt Number: POC128277
Cashier ID: jattow
Transaction Date: 05/01/2015
Payer Name: ERIC RAYZ

CIVIL FILING FEE

For: ERIC RAYZ

Case/Party: b POC-2-15-CV-002401-001
Amount: \$400.00

CIVIL FILING FEE

For: ERIC RAYZ

Case/Party: b POC-2-15-CV-002402-001
Amount: \$400.00

CREDIT CARD

Amt Tendered: \$800.00

Total Due: \$800.00

Total Tendered: \$800.00

Change Amt: \$0.00

Only when bank clears the check,
money order, or verifies credit of
funds is the fee or debt officially
paid or discharged. A \$53 fee will
be charged for a returned check.

SD

1

FILED

MAY 01 2015

MICHAEL E. KUNZ, Clerk
By *AK* Dep. Clerk

\$400

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MELISSA DEVIN MAGNESS, individually
and on behalf of all others similarly situated

Plaintiff

v.

BANK OF AMERICA, N.A.; WALLED
LAKE CREDIT BUREAU, LLC; URBAN
SETTLEMENT SERVICES, LLC D/B/A
URBAN LENDING SOLUTIONS;
DIALOGUE MARKETING, INC.; and DOES
1 through 10, inclusive,

Defendants

15 2402

Civil Action No.: _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Melissa Devin Magness (hereinafter "Magness" or "Plaintiff"), on behalf of herself and
all others similarly situated, alleges as follows:

INTRODUCTION

1. Plaintiff brings this action for damages pursuant to the Telephone Consumer
Protection Act of 1991 (hereinafter "TCPA"), 47 U.S.C. § 227.

THE PARTIES

2. Plaintiff is an adult individual who is a citizen of the Commonwealth of
Pennsylvania.

3. Plaintiff is a "consumer," as that term is defined and/or contemplated within the
scope of TCPA.

4. Defendant BANK OF AMERICA, N.A. (hereinafter, individually, "BOA") is a
national bank, engaged in the business of debt collection, within the Commonwealth of
Pennsylvania. BOA is a subsidiary of Bank of America Corporation with its headquarters

5

located in Charlotte, North Carolina.

5. Defendant WALLED LAKE CREDIT BUREAU, LLC (hereinafter, individually, “WLCB”) is a limited liability company, organized in the State of Michigan, registered to do business in the Commonwealth of Pennsylvania, and engaged in the business of debt collection within the Commonwealth of Pennsylvania. Upon information and belief, WLCB’s principal place of business is located at 2328 Ventura Dr. Walled Lake, MI 48390.

6. Indeed, when registering to do business in the Commonwealth of Pennsylvania (as well as a multitude of other states), WLCB disclosed that the sole purpose of its formation, operation, and registration is debt collection.

7. WLCB has sought, applied for, and/or secured licensing as a debt collector in every U.S. jurisdiction that requires such licensing and where WLCB does business.

8. Defendant URBAN SETTLEMENT SERVICES, LLC D/B/A URBAN LENDING SOLUTIONS (hereinafter, individually, “Urban”) is Pennsylvania limited liability company, engaged in the business of debt collection, within the Commonwealth of Pennsylvania. Urban is the parent company of WLCB.

9. Defendant DIALOGUE MARKETING, INC. (hereinafter, individually, “DMI”) is a Michigan corporation with a principal place of business in Troy, Michigan, engaged in the business of providing inbound and outbound call center services.

10. Plaintiff is unaware of the names and capacities of those defendants sued as DOES 1 through 10, but will seek leave to amend this complaint once their identities become known to Plaintiff. Upon information and belief, Plaintiff alleges that at all relevant times each defendant, including the DOE defendants 1 through 10, was the officer, director, employee, agent, representative, alter ego, or co-conspirator of each of the other defendants, and in

engaging in the conduct alleged herein was in the course and scope of and in furtherance of such relationship.

11. Unless otherwise specified, Plaintiff will refer to all defendants collectively as “Defendants” and each allegation pertains to each Defendant.

JURISDICTION AND VENUE

12. This Court has jurisdiction pursuant to 15 U.S.C. § 1692k and 28 U.S.C. § 1331.

13. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

14. The Eastern District of Pennsylvania is the proper venue for this litigation pursuant to 28 U.S.C. § 1391, as a substantial part of the acts or omissions giving rise to the claims alleged herein occurred within this judicial district, and the Defendants are subject to personal jurisdiction in this district.

FACTUAL ALLEGATIONS

15. Defendants regularly use an instrumentality of interstate commerce in a business of collection of debts in default and/or regularly collect or attempt to collect, directly or indirectly, debts owed or due (or asserted to be owed or due) another.

16. At all times material hereto, Defendants acted and/or failed to act in person and/or through duly authorized agents, servants, workmen, and/or employees, acting within the scope and course of their authority and/or employment for and/or on behalf of Defendants.

17. In June of 2011, Plaintiff purchased a townhouse, located in the Northern Liberties section of Philadelphia. Plaintiff bought this property to use as a personal residence.

18. The purchase was facilitated by a loan from BOA.

19. Thereafter, as customary, Plaintiff began receiving regular “mortgage statements”

from BOA that identified the necessary monthly payment due to BOA.

20. At all times relevant hereto, after receiving her mortgage statements, Plaintiff made timely, up-to-date payments to BOA, in accordance with the mortgage statements.

21. In addition to the monthly amounts due under the mortgage, Plaintiff also made regular, voluntary, and significant contributions towards the principal of the loan.

22. In August of 2012, Plaintiff did not receive her regular mortgage statement. Plaintiff telephoned BOA to inquire about the statement and the status of her mortgage.

23. A BOA representative informed Plaintiff that her account was current and that, although she did not receive a mortgage statement, she was still responsible for making her payment to BOA. Plaintiff subsequently made a payment in the amount she was told to make by the BOA representative.

24. Several days later, Plaintiff received a package, delivered by FedEx. Thinking that the package was from BOA, Plaintiff accepted the package, because she was familiar with BOA's logos and insignia. Indeed, the package specifically noted it contained "Important Information from Bank of America Home Loans."

25. Notably, however, the package indicated that it may have been sent from an entity other than BOA – WLCB.

26. The package also threatened that the delinquency status of Plaintiff's mortgage "will be reported to credit reporting agencies."

27. After receiving this package in September 2012, Plaintiff immediately called BOA to inquire about the status of her account. During this phone call, for the first time, Plaintiff was told by a BOA representative that there was an issue with her escrow account balance and that she needed to submit additional funds to cover the balance.

28. The issue surrounding Plaintiff's escrow balance stemmed from her changing home insurers. Unbeknownst to Plaintiff at that time, BOA made payments to both insurers out of Plaintiff's escrow account.

29. At no time was Plaintiff delinquent in her mortgage payments.

30. Despite not being in default or being behind by two months payments, Plaintiff immediately paid the requested amount. After relying on BOA's representations and remitting an additional payment, Plaintiff was told that everything was now "OK" and that a note would be placed on her account that all further **collection activity** must cease.

31. Two days later, Plaintiff began receiving phone calls on her cellular phone from then unknown individuals, claiming that she owes money to BOA. The individuals identified themselves as both calling "from BOA" and also claiming to be "representing BOA."

32. Plaintiff has subsequently learned that these telephone calls were initiated by automatic telephone dialing system from a call center manned by DMI personnel, hired and/or otherwise retained by Urban, and overseen by WLCB. All of these calls were done in accordance with BOA's operating guidelines. In short, these unwanted calls were initiated by BOA, Urban, WLCB, and DMI.

33. Confused and frustrated, Plaintiff again called BOA to determine the status of her account. During the course of this call, a representative of BOA stated that the account was "up to date" and without any default. At that time, Defendants were informed that they must stop calling Plaintiff. BOA's representative confirmed that, although this issue involved a "different department," there would be no more **collection activity** with regard to Plaintiff's account and that all phone calls will be stopped and/or halted.

34. Nonetheless, in the days following the conference call with the BOA

representative, Plaintiff still continued to receive phone calls from multiple individuals, who claimed to be calling from BOA or, in some instances, “representing” BOA.

35. Despite Plaintiff’s demand that the collection calls cease, the individuals continued calling, dialing her cellular phone number repeatedly.

36. In total, from mid-August through mid-September of 2012, BOA attempted to contact Plaintiff directly thirty-four (34) times. A number of these calls were directed to Plaintiff’s cellular phone. In addition, during the same period of time, BOA, through the other Defendants, contacted Plaintiff at least four (4) additional times.

37. Defendants knew or should have known that their actions violated the TCPA.

38. Defendants could have taken the steps necessary to bring their agents’ actions into compliance with the TCPA, but Defendants neglected to do so and failed to adequately review those actions to insure compliance with the law.

39. Defendants’ conduct, as alleged herein, is (and was) deliberate, intentional, reckless, willful, and wanton.

40. Defendants’ conduct, as alleged herein, violated the TCPA in that they initiated numerous telephone calls to Plaintiff’s cellular telephone using an automatic telephone dialing system after Plaintiff requested that these calls cease.

41. Accordingly, Defendants willfully and knowingly violated the TCPA. Indeed, even a cursory review of Plaintiff’s records would have revealed that her phone number contained a Florida area code and that she lived in Pennsylvania – a clear indication that the caller would be dialing a cellular telephone number.

42. Consequently, upon information and belief, Defendants did not maintain any system to determine whether the automatic telephone dialing system was dialing a cellular phone

number.

43. Upon information and belief, BOA established a set of comprehensive procedures and policies, as to the initiation, frequency, and termination of the phone calls that were to be directed to the TCPA Class members. For example, BOA expected that, once a BRP was sent, the other Defendants would initiate a follow-up telephone campaign to individuals to whom the BRP was addressed by calling the telephone numbers provided by BOA.

44. It was the expectation that Urban, WLCB, and DMI would follow and conform to these mandates.

45. Upon information and belief, as a result of BOA's procedures, policies, and guidelines, there were thousands of calls initiated during the relevant time period to TCPA Class members. Indeed, Plaintiff received at least four (4) such calls.

46. Despite BOA's comprehensive procedures, policies, and guidelines, upon information and belief, there was no protocol between Defendants to convey that a TCPA Class member, including Plaintiff, revoked their consent to receiving telephone calls from Defendants.

47. Plaintiff and the members of the Classes have been (and will continue to be) damaged due to Defendants' violations of the TCPA, as set forth herein.

48. Plaintiff and the members of the Classes have suffered and will continue to suffer actual damages due to Defendants' conduct, as set forth herein. Left unabated, Defendant will continue to disregard the protections afforded consumers under the TCPA.

CLASS ACTION ALLEGATIONS

49. Plaintiff brings this action on behalf of herself and similarly-situated individuals pursuant to Fed.R.Civ.P. 23.

50. Plaintiff brings this action as a nationwide class action for Defendants' violations

of the TCPA on behalf of the following class of individuals: all persons and entities throughout the United States (a) to whom Defendants placed, or caused to be placed, calls (b) directed to a number assigned to a cellular telephone service, by (c) using an automatic telephone dialing system or an artificial or prerecorded voice, (d) within four years preceding the date of this complaint, (e) absent prior express consent (hereinafter "Class").

51. The number of individuals in the Class is so numerous that joinder of all members is impracticable. The exact number of members of in the Class can be determined by reviewing Defendants' records. Plaintiff is informed and believes and thereon alleges that there are over a hundred individuals in the defined Class.

52. Plaintiff will fairly and adequately protect the interests of the Class, and has retained counsel that is experienced and competent in class action and employment litigation. Plaintiff has no interests that are contrary to, or in conflict with, members of the Class.

53. A class action suit, such as the instant one, is superior to other available means for fair and efficient adjudication of this lawsuit. The damages suffered by individual members of the Classes may be relatively small when compared to the expense and burden of litigation, making it virtually impossible for members of the Class to individually seek redress for the wrongs done to them.

54. A class action is, therefore, superior to other available methods for the fair and efficient adjudication of the controversy. Further, absent these actions, members of the Classes likely will not obtain redress of their injuries, and Defendant will retain the proceeds of their violations of the TCPA. In addition, Defendants are likely to continue to violate this statute.

55. Furthermore, even if any member of the Class could afford individual litigation against Defendants, it would be unduly burdensome to the judicial system. Concentrating this

litigation in one forum will promote judicial economy and parity among the claims of individual members of the Class and provide for judicial consistency.

56. There is a well-defined community of interest in the questions of law and fact affecting the Class as a whole. The questions of law and fact common to the Class predominate over any questions affecting solely individual members of the action. Among the common questions of law and fact are:

- a. Whether Defendants continued to call Plaintiff and Class members on their cellular telephones after such individuals revoked their consent to receive such calls;
- b. Whether Defendants violated the TCPA by calling Class members' cellular telephones using an automatic telephone dialing system; and
- c. Whether Plaintiff and the members of the Class have sustained damages and, if so, the proper measure of damages.

57. Plaintiff's claims are typical of the claims of members of the Class. Plaintiff and members of the Class have sustained damages arising out the same wrongful and uniform practices of Defendants.

58. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its continued maintenance.

COUNT I
Violation of the TCPA

59. Plaintiff hereby incorporates all facts and allegations of this document by reference, as if fully set forth at length herein.

60. At all times relevant hereto, Defendants used, controlled and or operated an "automatic telephone dialing systems," as defined by 47 U.S.C. § 227(a)(1).

61. Defendants initiated multiple telephone calls to Plaintiff and Class members' cellular telephone lines using an automatic telephone dialing system. 47 U.S.C. § 227(b)(1)(A)(iii). These calls were made after Plaintiff and Class members revoked their prior consent to receive such calls.

62. No exemption applies to Defendants' conduct, as the Third Circuit has recently determined that an individual or entity can be held liable under the TCPA for using an automated telephone dialing system to call a consumer's cellular phone after the consumer asked not to be contacted. See Gager v. Dell Financial Services, LLC, 727 F.3d 265 (3rd Cir. 2013).

63. The acts and or omissions of Defendants were done willfully and knowingly, absent *bona fide* error, lawful right, legal defense, justification, or legal excuse.

64. In relevant part, the TCPA provides:

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State—

(A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or

(C) both such actions.

If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

47 U.S.C. § 227(b)(3).

65. As a result of the above violations of the TCPA, Defendants are liable to Plaintiff and the members of the Class in the sum of statutory damages, actual damages, and treble

damages.

CLAIM FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for:

- (a) A Declaration that Defendants have violated the applicable provisions of the TCPA;
- (b) An Order designating this action as a class action pursuant to Federal Rule of Civil Procedure 23;
- (c) An Order appointing Plaintiff and her counsel to represent the Classes;
- (d) An Order enjoining Defendants from any further violations of the TCPA;
- (e) Actual damages;
- (f) Statutory damages;
- (g) Treble damages for violations of the TCPA;
- (h) Attorneys' fees and costs; and
- (i) Such other relief as the Honorable Court shall deem just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all issues so triable.

(SIGNATURE ON THE NEXT PAGE)

Date: May 1, 2015

Respectfully submitted,
KALIKHMAN & RAYZ, LLC

/s/ 

Arkady "Eric" Rayz, Esquire
Demetri A. Braynin, Esquire
1051 County Line Road, Suite "A"
Huntingdon Valley, PA 19006
Telephone: (215) 364-5030
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E-mail: erayz@kalraylaw.com
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Email: rgray@cwg-law.com

Counsel for Plaintiff and the Proposed Class